

# **Rent Repayment Orders and Civil Penalties Policy under the Housing and Planning Act 2016**

# Rent Repayment Orders and Civil Penalties Policy under the Housing and Planning Act 2016

This policy is supplementary to the Council's Enforcement Policy.

The purpose of this policy is to set out the framework within which decisions will normally be made with regard to applying for a Rent Repayment Order and to issuing Civil Penalties in relevant cases.

This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.

## 1. Rent Repayment Orders (RRO's)

A Rent Repayment Order is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to –

- (a) repay an amount of rent paid by a tenant, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

NB. The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition.

The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

### Offences for which a Rent Repayment Order can be obtained:-

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004
- Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only.

The offence must have been committed on or after 6<sup>th</sup> April 2017.

A RRO can be applied for whether or not the landlord has been convicted.

### Evidence of commission

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence.

In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

## **Statutory Guidance**

In deciding whether to apply for a RRO, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606654/Rent\\_Repayment\\_Orders\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf) ).

## **Assistance**

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to Derbyshire Law Centre or other appropriate bodies for further support.

### **1.2 Considerations for decision as to whether to apply for a RRO**

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

The following questions shall be considered:

The matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

No.	Question	Yes or No
1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2.
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by AVBC over the 12 months?	If no – no case for RRO. If yes, proceed to

		step 3.
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step5.
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6.
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7.
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing.
8.	<u>RRO</u> Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	<u>Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO</u>	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RRO's shall be followed.

### 1.3 Factors to influence amount of RRO

1.	<b>Punishment of the offender</b> – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	<b>Deter the offender from repeating the offence</b> – level of RRO must be high enough to deter offender from repeating
3.	<b>Dissuade others from committing similar offences</b> – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	<b>Remove any financial benefits that the offender may have obtained as a result of the offence</b> – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	<b>Is there any other factors the Council considers should be taken into account.</b>

Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

## 2. Civil Penalties

Where evidence is obtained that an offence has been committed which falls within the powers to issue financial penalty notices (i.e. civil penalty notices) within the Housing and Planning Act 2016, Council officers will consider whether this is an appropriate alternative to prosecution through the Courts.

The following offences under the Housing Act 2004 can be considered for civil penalty:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Housing Act 2004 (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

The maximum fine that can be currently issued through a civil penalty is £30,000.

The Authority must have regard to any guidance issued by the Secretary of State (see the DCLG document ‘Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities’

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf) ).

An appeal against the issue of a civil penalty is heard by the First-tier Tribunal.

Civil penalties will therefore be pursued only where sufficient evidence is obtained to demonstrate to the Tribunal ‘beyond reasonable doubt’ that a relevant offence has been committed. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/) ) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. Therefore, the power to issue civil penalty will be pursued where it is considered the most appropriate course of action.

Where the offence is of the highest severity, or where the landlord has previous convictions or a poor track record of compliance, prosecution may be considered the most suitable course of action to enable a Court to examine the circumstances and make the most appropriate decision. It is considered that prosecution shall be reserved for exceptional cases, and otherwise that civil penalties should normally be pursued for all clear breaches of the relevant legislation, provided that the conditions below exist.

## **2.1 Factors to be considered when deciding whether to pursue a civil penalty**

No.	Question	Yes or No
1.	Does the seriousness of the offence suggest that a trial in court is warranted. Is there a suggestion that a banning order* may be warranted? Does the landlord have a history of previous convictions?  NB. *Section 21 is not yet in force but expected to be on 1 October 2017	If yes, to any or all of these questions, prosecution should be <b>considered</b>
2.	Does the LA have sufficient evidence to prove ‘beyond reasonable doubt’ that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?	If no – case closed, do not pursue. If yes, proceed to step 3.
3.	Is it in the public interest to proceed to apply for a civil penalty? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is pursuing a civil penalty proportionate to the offence?	If no – case closed, do not pursue. If yes,

		proceed to follow Civil Penalty procedure.
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Where two civil penalties are issued, the details of the landlord shall be submitted to be included on the database of rogue landlords.

Officers shall consider the DCLG guidance document in determining the level of fine. The matrix below gives an indication of the level of fine which should be imposed.

The guidance makes it clear that a civil penalty should not be a lesser alternative to prosecution and that the fine should ensure a real economic impact on the offender for not complying with their responsibilities.

## 2.2 Decision on level of fine for Civil Penalties

The three steps below shall be used to determine the level of fine to issue.

### Step One

A decision shall be made, by first considering the culpability factors below.

<b>Serious breach of legislation</b>	<u>Very High</u>
<b>History of failing to comply with legislation</b>	<u>High</u>
<b>An act or omission that a reasonable person would not commit</b>	Medium
<b>Effort was made to comply but was insufficient</b>	Medium
<b>Minor failings due to an isolated incident</b>	Low

The harm factors should then be considered and given a category below. Consideration to be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

<b>Serious adverse effect on individual or high risk of adverse effect. Includes vulnerable people</b>	Cat 1
<b>Adverse effect, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled</b>	Cat 2
<b>Low risk of an adverse effect.</b>	Cat 3

### Step Two

The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty

1. £1-£500
2. £501 - £1000
3. £ 1001-£2500
4. £2501 - £7000
5. £7001 – 17000
6. £17001-£30000

The table below indicates the level at which the fine should be imposed by considering culpability and harm

<b>Culpability</b>	<b>Harm Cat 1</b>	<b>Harm Cat 2</b>	<b>Harm Cat 3</b>
Very high	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

The following factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment.

### **Factors increasing seriousness**

#### Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offences to which the conviction relates and its relevance to the current offence; and b) the time that has been elapsed since the conviction
- Offence committed whilst on bail

#### Other aggravating factors include (this is not an exhaustive list):

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Refusal of free advice

### **Factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):**

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/member of Accreditation scheme
- Self-reporting, co-operation and acceptance of responsibility
- Good character

### **Obtaining financial information**

- The Council shall submit a request to the offender, to provide any financial information that they feel shall influence their ability to pay a high fine. This will be taken into consideration if it appears reliable. If no information is provided then the Council will consider any information known to them regarding the offender, consider this when making a decision regarding the level of fine.

### **Step Three**

Step back and review the penalty. Ensure that it meets, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

### **Step Four**

Pass the file to Legal Services to review the case as a whole before, where appropriate, any notice of intent is issued and any final notice relating to a civil penalty is given by, or on behalf of, the authorised Council officer.

### **Step Five**

Ensure a written record of delegated decision is duly completed and forwarded on to Democratic Services.

### **Step Six**

Where a civil penalty remains outstanding, consider what enforcement action is appropriate, having regard to the Council's Enforcement Policy.